



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151979

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 04, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent a notice of FoodShare overissuance, dated August 20, 2013, that informed Petitioner and his then girlfriend RF (they are now married) that the household had been overissued FoodShare benefits for the period from June 1, 2012 through April 30, 2013 in the amount of \$3002.00. The reason for the overissuance was the result of client error; the failure to report that Petitioner was back in the household.
3. RF had an open FoodShare case at all times relevant here. Petitioner is the father of their children.

4. With Petitioner, the household size was 4.
5. Petitioner had been in Federal prison and was released to a halfway program that approved an in home detention plan for Petitioner. His transfer to the in home program was in early April 2012. RF did report this to the child support agency in Racine but not the FoodShare program.
6. Petitioner did begin employment after his release to the in home detention program.
7. The FoodShare program became aware that Petitioner was in the household with RF in 2013 and initiated the overpayment involved here by including Petitioner and his income in the FS household and in the eligibility and allotment calculation.
8. Petitioner was released from the in home detention program on or about August 20, 2013. While in home detention Petitioner was still required to pay a per diem to the Federal correctional system. The sum was about \$550.00 per month per Petitioner testimony.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH), Appendix 7.3.2*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSH, 7.3.2.1*. The overpayment alleged here is a client error. All adult members of the household are liable for the overpayment. See *FSH, §7.3.1.2*.

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A Petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

A FoodShare recipient/household with earnings is required to report changes in household income if it exceeds 130% of the FPL. *FSH, §6.1.1.2*. 130 % of the FPL for a household of 4 was \$2422.00 from October 1, 2011 through September 30, 2012 and \$2498 from October 1, 2012 through September 30, 2013. See *FSH, §8.1.1; releases 11-04 and 12-02*. It is apparent from Petitioner’s wage information and RF’s December 2012 six month report form that household income was in excess of these income amounts. See Exhibit #s 2-G and 2-H. Also, parents and children residing together must be counted as one household. *FSH, §3.3.1.3*.

Petitioner argues that he was still technically incarcerated during the months of June, July and August 2012 so should not be considered part of the FoodShare household and his income should not be counted. Alternatively, he notes that more than \$500 of his income was intercepted to pay the Federal correctional system through August 2012 and that should not be counted as household income.

Though the Federal in home custody program is not addressed specifically in the FoodShare Handbook it is similar to the Huber policy. That does require that a person released to the home who eats and prepares meals with the family is to be part of the household and that all gross income be counted – including wages intercepted to offset incarceration and monitoring costs. See *FSH, §3.2.1.2.2; especially Example # 9*. I do conclude that the agency correctly included Petitioner and his income in the household causing the overpayment that was the subject of this hearing and decision.

CONCLUSIONS OF LAW

That the agency correctly determined that Petitioner was part of his household as of June 2012 through April 2013 and concluded the household was overissued FoodShare benefits as his income was not counted in determining eligibility and allotment levels.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 27, 2013.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability